

AMENDED IN ASSEMBLY JULY 23, 1998

AMENDED IN ASSEMBLY JULY 8, 1998

AMENDED IN ASSEMBLY JUNE 23, 1998

AMENDED IN SENATE APRIL 23, 1998

**SENATE BILL**

**No. 2024**

**Introduced by Senator Rainey**

February 20, 1998

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An act to amend Section 1739.7 of the Civil Code, relating to collectibles.

LEGISLATIVE COUNSEL'S DIGEST

SB 2024, as amended, Rainey. Collectibles.

~~(1)~~Existing law defines the term “collectible” as any autographed sports item sold or offered for sale by a dealer for \$25 or more and the term “promoter” as a person who arranges, holds, organizes, or presents a trade show featuring collectibles. Existing law regulates the advertisement and sale of collectibles by, among other things, requiring specific disclosures about the merchandise, specifying the contents of certificates of authenticity, and providing consumers with the right to recover 10 times actual damages for injuries caused by a false or missing certificate. Existing law requires certificates of authenticity to include specified warranties, information, and disclosures.

This bill would provide, instead, that the term “collectible” applies to any autographed sports item sold or offered for sale to a consumer for \$5 or more and the term “promoter” applies

to a person who arranges, holds, organizes, or presents a trade show featuring collectibles, autograph signings, or both. This bill would expand the enumerated requirements of a certificate of authenticity, by requiring the inclusion of the date of sale, any identifying serial number, and information relating to an autograph signing, as specified.

~~(2) Existing law prohibits various forms of forgery, misrepresentation, and fraud. In this connection, existing law prohibits the sale of goods falsely using the name of another manufacturer, as well as the sale of goods possessing a counterfeit mark, patent, or trademark.~~

This bill would make it a misdemeanor to knowingly manufacture, produce, or sell any forged, copied, or imitated collectible, as defined, without authority or right or to violate the requirements in connection with the duty of a dealer to provide a certificate of authenticity. By creating a new crime, this bill would impose a state-mandated local program.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1739.7 of the Civil Code is  
2 amended to read:

3 1739.7. (a) As used in this section:

4 (1) “Autographed” means bearing the actual  
5 signature of a personality signed by that individual’s own  
6 hand.

7 (2) “Collectible” means an autographed sports item,  
8 including, but not limited to, a photograph, book, ticket,  
9 plaque, sports program, trading card, item of sports  
10 equipment or clothing, or other sports memorabilia sold  
11 or offered for sale in or from this state by a dealer to a  
12 consumer for five dollars (\$5) or more.

1 (3) “Consumer” means any natural person who  
2 purchases a collectible from a dealer for personal, family,  
3 or household purposes. “Consumer” also includes a  
4 prospective purchaser meeting these criteria.

5 (4) “Dealer” means a person who is in the business of  
6 selling or offering for sale collectibles in or from this state,  
7 exclusively or nonexclusively, or a person who by his or  
8 her occupation holds himself or herself out as having  
9 knowledge or skill peculiar to collectibles, or to whom  
10 that knowledge or skill may be attributed by his or her  
11 employment of an agent or other intermediary that by his  
12 or her occupation holds himself or herself out as having  
13 that knowledge or skill. “Dealer” includes an auctioneer  
14 who sells collectibles at a public auction, and also includes  
15 persons who are consignors or representatives or agents  
16 of auctioneers. “Dealer” includes a person engaged in a  
17 mail order, telephone order, or cable television business  
18 for the sale of collectibles.

19 (5) “Description” means any of the following:

20 (A) Any representation in writing, including, but not  
21 limited to, a representation in an advertisement,  
22 brochure, catalog, flyer, invoice, sign, or other  
23 commercial or promotional material.

24 (B) Any oral representation.

25 (C) Any representation included in a radio or  
26 television broadcast to the public in or from this state.

27 (6) “Limited edition” means any collectible that  
28 meets all of the following requirements:

29 (A) A company has produced a specific quantity of a  
30 collectible and placed it on the open market.

31 (B) The producer of the collectible has posted a  
32 notice, at its primary place of business, that it will provide  
33 any consumer, upon request, with a copy of a notice that  
34 states the exact number of a collectible produced in that  
35 series of limited editions.

36 (C) The producer makes available, upon request of a  
37 consumer, evidence that the electronic encoding, films,  
38 molds, or plates used to create the collectible have been  
39 destroyed after the specified number of collectibles have  
40 been produced.

1 (D) *The sequence number of the collectible, and the*  
2 *number of the total quantity produced in the limited*  
3 *edition is printed on the collectible.*

4 (7) “Mint condition” means any collectible sold on the  
5 open market or through a private transaction that meets  
6 all of the following requirements:

7 (A) The item has never been circulated, used, or worn.

8 (B) The item exhibits little or no signs of aging or  
9 degradation caused by oxidation or exposure to sunlight  
10 as a result of its display.

11 (C) The item is otherwise free from creases,  
12 blemishes, or marks.

13 (8) “Promoter” means a person who arranges, holds,  
14 organizes, or presents a trade show featuring collectibles,  
15 autograph signings, or both.

16 (9) “Person” means any natural person, partnership,  
17 corporation, limited liability company, company, trust,  
18 association, or other entity, however organized.

19 (b) Whenever a dealer, in selling or offering to sell to  
20 a consumer a collectible in or from this state, provides a  
21 description of that collectible as being autographed, the  
22 dealer shall furnish a certificate of authenticity to the  
23 consumer at the time of sale. The certificate of  
24 authenticity shall be in writing, shall be signed by the  
25 dealer or his or her authorized agent, and shall specify the  
26 date of sale. The certificate of authenticity shall be in at  
27 least 10-point boldface type and shall contain the dealer’s  
28 true legal name and street address. The dealer shall retain  
29 a copy of the certificate of authenticity for not less than  
30 seven years. Each certificate of authenticity shall do all of  
31 the following:

32 (1) Describe the collectible and specify the name of  
33 the sports personality who autographed it.

34 (2) Either specify the purchase price and date of sale  
35 or be accompanied by a separate invoice setting forth that  
36 information.

37 (3) Contain an express warranty, which shall be  
38 conclusively presumed to be part of the bargain, of the  
39 authenticity of the collectible. This warranty shall not be  
40 negated or limited by reason of the lack of words such as

1 “warranty” or “guarantee” or because the dealer does not  
2 have a specific intent or authorization to make the  
3 warranty or because any statement relevant to the  
4 collectible is or purports to be, or is capable of being,  
5 merely the dealer’s opinion.

6 (4) Specify if the collectible is offered as one of a  
7 limited edition and, if so, shall specify (A) how the  
8 collectible and edition are numbered and (B) the size of  
9 the edition and the size of any prior or anticipated future  
10 edition, if known, or if not known, the certificate shall  
11 contain an explicit statement to that effect.

12 (5) Indicate whether the dealer is surety bonded or is  
13 otherwise insured to protect the consumer against errors  
14 and omissions of the dealer and, if bonded or insured,  
15 provide proof thereof.

16 (6) Indicate the last four digits of the dealer’s resale  
17 certificate number from the State Board of Equalization.

18 (7) Indicate whether the item was autographed in the  
19 presence of the dealer and specify the date and location  
20 of, and the name of a witness to, the autograph signing.

21 (8) Indicate whether the item was obtained or  
22 purchased from a third party. If so, indicate the name and  
23 address of this third party.

24 (9) Include an identifying serial number which  
25 corresponds to an identifying number printed on the  
26 collectible item, if any. The serial number shall also be  
27 printed on the sales receipt. If the sales receipt is printed  
28 electronically, the dealer may manually write the serial  
29 number on the receipt.

30 (c) No dealer shall represent an item as a collectible if  
31 it was not autographed by the sports personality in his or  
32 her own hand.

33 (d) No dealer shall display or offer for sale a collectible  
34 in this state, unless at the location where the collectible  
35 is offered for sale, and in close proximity to the collectible  
36 merchandise, there is a conspicuous sign that reads as  
37 follows:

38  
39 “SALE OF AUTOGRAPHED SPORTS MEMORABILIA:  
40 AS REQUIRED BY LAW, A DEALER WHO SELLS TO

1 A CONSUMER ANY SPORTS MEMORABILIA  
2 DESCRIBED AS BEING AUTOGRAPHED MUST  
3 PROVIDE A WRITTEN CERTIFICATE OF  
4 AUTHENTICITY AT THE TIME OF SALE. THIS  
5 DEALER MAY BE SURETY BONDED OR  
6 OTHERWISE INSURED TO ENSURE THE  
7 AUTHENTICITY OF ANY COLLECTIBLE SOLD BY  
8 THIS DEALER.”

9

10 (e) Any dealer engaged in a mail-order or  
11 telephone-order business for the sale of collectibles in or  
12 from this state:

13 (1) Shall include the disclosure specified in paragraph  
14 (d), in type of conspicuous size, in any written  
15 advertisement relating to a collectible.

16 (2) Shall include in each television advertisement  
17 relating to a collectible the following written on-screen  
18 message, which shall be prominently displayed, shall be  
19 easily readable, and shall be clearly visible for no less than  
20 five seconds and shall be repeated for five seconds once  
21 during each four-minute segment of the advertisement  
22 following the initial four minutes:

23

24 “A written certificate of authenticity is provided with  
25 each autographed collectible, as required by law. This  
26 dealer may be surety bonded or otherwise insured to  
27 ensure the authenticity of any collectible sold by this  
28 dealer.”

29

30 (3) Shall include as part of the oral message of each  
31 radio advertisement for a collectible the disclosure  
32 specified in subdivision (d).

33 (f) No dealer shall display or offer for sale a collectible  
34 in this state at any trade show or similar event primarily  
35 featuring sales of collectibles or other sports memorabilia  
36 which offers onsite admission ticket sales, unless at each  
37 onsite location where admission tickets are sold, there is  
38 prominently displayed a specimen example of a  
39 certificate of authenticity.



(g) Any consumer injured by the failure of a dealer to provide a certificate of authenticity containing the information required by this section, or by a dealer's furnishing of a certificate of authenticity that is false, shall be entitled to recover, in addition to actual damages, a civil penalty in an amount equal to 10 times actual damages, plus court costs and reasonable attorney's fees incurred by the consumer in the action. The remedy specified in this section is in addition to, and not in lieu of, any other remedy that may be provided by law.

(h) No person shall represent himself or herself as a dealer in this state unless he or she possesses a valid resale certificate number from the State Board of Equalization.

(i) A dealer may be surety bonded or otherwise insured for purposes of indemnification against errors and omissions arising from the authentication, sale, or resale of collectibles.

(j) Whenever a promoter arranges or organizes a trade show featuring collectibles and autograph signings, the promoter shall notify, in writing, any dealer who has agreed to purchase or rent space in this trade show what the promoter will do if any laws of this state are violated, including the fact that law enforcement officials will be contacted when those laws are violated. This notice shall be delivered to the dealer, at his or her registered place of business, at the time the agreement to purchase space in the trade show is made. The following language shall be included in each notice:

“As a vendor at this collectibles trade show, you are a professional representative of this hobby. As a result, you will be required to follow the laws of this state, including laws regarding the sale and display of collectibles, as defined in Section 1739.7 of the Civil Code, forged and counterfeit collectibles and autographs, and mint and limited edition collectibles. If you do not obey the laws, you may be evicted from this trade show, be reported to law enforcement, and be held liable for a civil penalty of 10 times the amount of damages.”

1 (k) Any person who ~~knowingly manufactures,~~  
2 ~~produces, or sells any collectible that is a forgery, copy, or~~  
3 ~~imitation produced without authority or right, or who~~  
4 knowingly fails to comply with the requirements of  
5 subdivision (b), is guilty of a misdemeanor and shall be  
6 punished by imprisonment in a county jail not to exceed  
7 six months, by a fine not to exceed one thousand dollars  
8 (\$1,000), or by both that imprisonment and fine.

9 SEC. 2. No reimbursement is required by this act  
10 pursuant to Section 6 of Article XIII B of the California  
11 Constitution because the only costs that may be incurred  
12 by a local agency or school district will be incurred  
13 because this act creates a new crime or infraction,  
14 eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section  
16 17556 of the Government Code, or changes the definition  
17 of a crime within the meaning of Section 6 of Article  
18 XIII B of the California Constitution.

19 Notwithstanding Section 17580 of the Government  
20 Code, unless otherwise specified, the provisions of this act  
21 shall become operative on the same date that the act  
22 takes effect pursuant to the California Constitution.

